

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

MICHAEL KEITH HENLEY, Movant, vs. UNITED STATES OF AMERICA, Respondent.	5:18-CV-05005-KES ORDER DENYING MOTION TO PROCEED IN FORMA PAUPERIS ON APPEAL AND DENYING CERTIFICATE OF APPEALABILITY
---	--

Movant, Michael Keith Henley, is an inmate at the United States Penitentiary Big Sandy in Inez, Kentucky. He filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255. Dockets 1. This court dismissed his petition and denied a certificate of appealability. Docket 15. On April 20, 2018, Henley filed a notice of appeal. Docket 17. Henley now moves to proceed in forma pauperis on appeal (Docket 18) and requests that a certificate of appealability be issued permitting appeal to the Eighth Circuit Court of Appeals (Docket 21).

Under Federal Rules of Appellate Procedure 24, an appellant who has not received prior approval from the district court to proceed in forma pauperis must file an affidavit that “(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal.” According to the Prisoner Trust Account Report prepared on April 13, 2018, Henley reported average monthly deposits to his prisoner trust

account of \$290.00 and an average monthly balance of \$1,902.83. Docket 20. Henley's application demonstrates his ability to pay the appellate filing fee of \$505. Thus, Henley's motion to proceed in forma pauperis on appeal (Docket 18) is denied.

Henley also moves for a certificate of appealability. Docket 21. Before denial of a § 2255 motion may be appealed, a movant must first obtain a certificate of appealability from the district court. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003). A certificate may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(2). A "substantial showing" is one that demonstrates "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The court previously denied a certificate of appealability. Docket 15. Based upon the reasons set forth in this court's order of April 3, 2018, this court again denies the issuance of a certificate of appealability.

Thus, it is ORDERED

1. Henley's motion to proceed in forma pauperis on appeal (Docket 18) is denied.
2. Henley's motion for certificate of appealability (Docket 21) is denied.

DATED this 24th day of April, 2018.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE